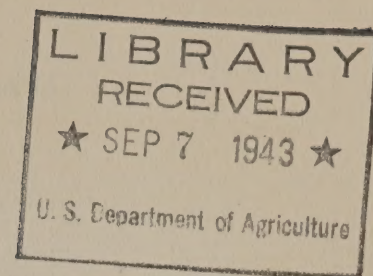


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PENNSYLVANIA STATE MILK CONTROL ACT

PAPER NO. 8. Series on State Milk Control Acts, Dairy Section,
Agricultural Adjustment Administration, United States Department
of Agriculture.

March 27, 1937.

Introduction

This is one of a series of papers designed to make available, in a condensed and convenient form, information concerning State milk control acts, the type of regulations issued thereunder, and, in general, the legal developments in connection with their administration and enforcement. One paper will be devoted to each State having such an act.

It is expected that a general summary of all the State acts and regulations will be prepared when the review of individual State acts and regulations is completed. In this connection some comparison may be made. These papers omit much detail which might be helpful to those concerned with legislative or administrative problems of State milk control. Those who desire more complete information will undoubtedly find it to their advantage to get in touch with the officials charged with the administration of these acts.

STATE MILK CONTROL IN PENNSYLVANIA
THE ACT, ITS ADMINISTRATION AND LEGAL STATUS

PART ONE

I. General Character of Legislation.

Emergency milk control legislation first went into effect in the Commonwealth of Pennsylvania in the spring of 1934 and has continued in somewhat amended form since that time. The present act expires April 30, 1937.^{1/} The language in the law of 1934 and of the present act is identical in declaring that in the exercise of the police power, "the production, transportation, manufacture, processing, storage, distribution, and sale of milk in the Commonwealth is a business affecting the public health and affected with a public interest" and that the purpose of regulating and controlling the milk industry is to protect the health, welfare and comfort of the inhabitants of the State.

Type of Governing Agency

The law creates an independent administrative board known as the Milk Control Board, consisting of three members, citizens of the United States, residents of and voters in Pennsylvania, who shall be nominated by the Senate and with its consent appointed by the Governor. The salary of each member is fixed at \$6,000 per year and the recipient during his period of service shall hold no other office under the laws of the State or of the United States. The board may appoint a secretary "to hold office at its pleasure" and other assistants.

Conditions Under Which Powers of Board
May Be Exercised

Except that approval by the Governor is requisite in certain specific instances, the board may exercise its authority under the act upon its own initiative and without petition, acquiescence or restraint on the part of producers, cooperative associations, milk distributors, or others.

Source of Financing

All money collected or received by the board arising from license fees,^{2/} penalties, or from any other source, shall be paid into the State

^{1/} The first act, known as Pamphlet Law 174, 1933-1934, was approved by the Governor on January 2, 1934. The present law, amending and reenacting the first act, was approved April 30, 1935.

^{2/} The act makes mandatory payment by milk dealers of license fees on a yearly basis, the fees ranging in amount from \$1 to \$5,000.

Treasury, there to be placed in the "Milk Control Fund,"^{3/} and is appropriated to the board to be used to pay expenses necessary for the performance of its work. Estimates of the amounts to be expended shall be submitted to the Governor for his approval or disapproval. In addition, the sum of \$100,000 is appropriated to the board for its use until May 31, 1935, and also \$250,000 or part thereof as needed, for the period beginning June 1, 1935, and ending April 30, 1937.^{4/}

Statutory Protective Provisions

The validity of the act is sought to be preserved by the inclusion of first, a separability clause to the effect that if any portion is held to be invalid the remaining provisions shall not be affected, and second, a saving clause declaring that nothing in the act shall apply or be construed to apply to foreign or interstate commerce, except as may be effective in accordance with the United States Constitution and laws of the United States enacted pursuant thereto.

II. Regulatory Provisions.

Powers of the Board

Investigation.- The board, or an employee designated for the purpose, is vested with power to investigate, "as the emergency permits," (and also "regulate, as the emergency requires,") all matters pertaining to the entire milk industry of the State, "including the production, manufacture, processing, storage, transportation, disposal, distribution, and sale of milk^{5/} and milk products in this Commonwealth, including the establishment of reasonable trade practices; systems of production control, and marketing area enforcement committees in connection therewith." As specific aids in investigation the board may (1) issue subpoenas requiring the attendance of milk dealers or other persons, or the production of pertinent books and papers, and issue appropriate processes outside the State; (2) question such witnesses under

^{3/} "As much of the money, from time to time, in the Milk Control Fund, as may be necessary, is appropriated to the Board of Finance and Revenue, for the payment of approved claims, for refund made to the Board of Finance and Revenue, for moneys heretofore or hereafter paid into the Milk Control Fund, to which the Commonwealth is not rightfully entitled."

^{4/} At which time all unencumbered and unexpended monies remaining in the Milk Control Fund shall be paid into the General Fund.

^{5/} As defined, "'milk' includes fluid milk and cream, fresh, sour or storage, skimmed milk, buttermilk, ice cream mix, and condensed or concentrated whole or skimmed milk, except when contained in hermetically sealed cans or containers, which do not contain more than eight and one-quarter (8-1/4) pounds, or more than one hundred and thirty-two (132) fluid ounces."

oath or affirmation and examine such books and papers; (3) enter and inspect producers' and handlers' premises and plants; and (4) inspect all books, papers, records or documents in any place within the State for the purpose of ascertaining facts to enable the board to administer the act.^{6/}

Licensing powers.- Milk dealers, as defined in the act,^{7/} are required to be licensed by the board. Without a license a dealer shall not buy milk from producers or others within the State for storage, manufacture, processing, distribution, or sale within or without the State. The board, in its discretion, may, by official order, (1) exempt from license requirements dealers who buy or handle milk in a total quantity not exceeding 1,500 pounds in any month, (2) dealers selling milk in any quantity only in markets of 1,000 population, or less, for local consumption, and (3) stores, but stores selling milk all of which has been bought from a licensed dealer are specifically exempt from license requirements.

In applying for a license, which shall be done annually, the required license fee shall accompany the application and the applicant, among other things, shall show that he "has adequate technical personnel and adequate technical and physical facilities properly to conduct the business of receiving and handling milk, (and) that he has complied with all rules, regulations and orders of the board filed or served as required in this act" In addition, the applicant, except under special circumstances, shall execute and file with the application a personal bond approved by the board. Although it is mandatory that the board grant a license to an applicant who complies with the act and rules and regulations issued pursuant to the act, there are ten

^{6/} Information gained by the board by inspection of books, etc., or by reports required by the act "shall be for the confidential use of the board and the various departments of the State government, and shall not be disclosed by any person except as may be required in the enforcement of law or by order of the court." The board may, however, use such information for compilation and publication of statistics of the milk industry.

^{7/} "Milk dealer," by definition, "means any person, including any store, as hereinafter defined, who purchases or handles milk within the Commonwealth for sale, shipment, storage, processing or manufacture within or without the Commonwealth. A producer who delivers milk to a milk dealer only shall not be deemed a milk dealer" "Store" is defined as including "a grocery store, hotel, restaurant, soda fountain, dairy products store, or any similar mercantile establishment which sells milk."

specific grounds upon any of which, if the board is satisfied of its existence, issuance of license may be declined or a license already granted may be suspended or revoked.^{8/}

Bonding milk dealers.- Each licensee buying milk from producers in Pennsylvania is required in one of several ways to assure payment of milk purchased. Ordinarily he may furnish the board his personal bond. But if such bond does not appear adequate to protect the producers the dealer may be required to give a surety bond or a collateral bond.^{9/}

Records and reports.- In addition to such other records and information as the board may deem necessary for the proper enforcement of the act, the board may require licensees to keep records, among them records of (1) all milk received, detailed as to location and as to names and addresses of producers or dealers from whom received, with butterfat tests, prices paid, and deductions or charges made; (2) all milk sold, classified as to grade, location, and market outlet, and size and style of container, with prices and amounts received therefor; (3) the quantity of each milk product manufactured, the quantity of milk used in the manufacture of each product and the quantity and value of milk products sold; (4) wastage or loss of milk or butterfat; (5) the items of the spread or handling expense and profit or loss, represented by the difference between the price paid and the price received for all milk; and (6) all transactions affecting the assets, liabilities, or net worth of the licensee.

Verified reports shall be made and filed by each licensee, as required by the board, of all matters on account of which a record is required to be kept and as may be pertinent and material within the scope and purposes of the act.

Cooperation with other authorities.- The board is authorized (1) to confer with legally constituted authorities of other States and of the United States with respect to uniform milk control within the States and as between States, (2) to conduct joint investigations, hold joint hearings, and issue joint or concurrent orders, and (3) to enter into compacts for such uniform milk control, subject to such Federal approval as may be authorized or required by law.

Mediation and arbitration not specified.- Power to mediate or arbitrate in disputes among or between producers and distributors is not specifically provided in the act.

^{8/} These grounds are almost identical with certain provisions in the Milk Control Acts of other States, particularly New York and New Jersey.

^{9/} In the 1934 act emphasis was placed on the furnishing of a surety bond. On showing of financial strength the board could waive the surety bond and require only a personal bond; also a dealer financially unable to post any bond could, upon oath or affirmation, apply for exemption from all bonding requirements, providing he attached to his application the signed consent of his producers.

Powers in Regard to Price Regulation

Prices to be paid producers.- The board, under certain conditions, is charged with the duty of fixing, by official order, and with the approval of the Governor, the minimum prices to be paid by milk dealers to producers and others for milk, and "may likewise fix" the terms upon which payments shall be made. In the case of milk to be used solely in manufacturing price fixing is discretionary. Except when the board deems another course is necessary and the Governor approves such decision, it is the legislative intent that any increase of prices received by milk dealers - "by virtue of the minimum price provisions of this section" - shall be given to producers. An order fixing producer prices shall apply to the milk marketing area in which the milk is produced and to the milk marketing area in which the milk so produced is sold, and may vary in different areas according to varying uses and different conditions, and may classify such milk by forms, classes, grades or uses, as may be deemed advisable.

The conditions in compliance with which the board is empowered to fix producers' prices (applying also in the case of resale prices) are: (1) a hearing at which all interested persons shall be given full opportunity to be heard; (2) ascertainment by the board of the logical and reasonable milk marketing areas within the State, description of their territorial extent, and their designation by numbers; (3) determination of such prices in these areas "as will be most beneficial to the public interest and will best protect the milk industry in the Commonwealth and insure a sufficient quantity of pure and wholesome milk to adults and minors in the Commonwealth, having special regard to the health and welfare of children residing therein;" and (4) basing all prices "upon all conditions affecting the milk industry in each milk marketing area, including the amount necessary to yield a reasonable return to the producer and to the milk dealer."

Method of payment to producers.- The act does not specifically empower the board to establish a base-rating plan^{10/} or a market-wide plan for pooling the producers' milk. The method of payment indicated by the wording of the law is therefore that of the individual-dealer pool in areas where dealers are required to pay their producers class-use prices. It is not mandatory that the board fix prices on a use basis and apparently it may also price the producers' milk on the flat-price basis. In addition to these two methods of payment the act does not affect the right of a duly qualified cooperative association of producers to pool and pay a blended price for milk. It appears also (see footnote 10) that

^{10/} The board may, however, investigate and regulate "systems of production control;" if such systems are intended to mean or include base rating, the board would be authorized to regulate any base-rating procedure already in effect.

should there exist any base-rating plan through agreement between a co-operative and milk dealers, the board would be authorized to regulate and integrate the plan in a way not to conflict with the board's price-fixing program.

Resale prices.- After the same conditions have been complied with by the board as are required in the fixing of producer prices, the board, subject to the approval of the Governor, is required to fix, by official order, the minimum wholesale and retail prices, and may fix, by official order, the maximum wholesale and retail prices, to be charged for milk sold within any marketing area of the State, "wheresoever produced, including the following classes": (1) By milk dealers to (a) other dealers, (b) consumers and (c) stores, either for consumption on the premises or for resale to consumers; and (2) by stores to consumers, except for consumption on the premises where sold. When, pursuant to statute, regulations thereunder, or ordinance, various grades of milk are specified, prices, whether minimum or maximum, shall apply to each grade in each of the classes. Price orders may vary in different markets and shall designate the markets to which the orders are applicable. Price orders may classify milk dealers in any manner which the board deems advisable, "and may vary according to the classes to which they are applicable."

Powers With Respect to Unfair Competition and Trade Practices

The board is specifically vested with power to investigate and regulate trade practices, - "establishment of reasonable trade practices" is the phrase used in the act.

Limitations and Exceptions

Through definition of terms such as "milk," "milk dealer," "store" and "licensee," and otherwise, the intent of the Legislature is made known with respect to the regulation of the milk industry in Pennsylvania. In addition, there shall be no price fixing of milk sold to consumers by producers or dealers for consumption on the premises; stores shall be exempt from the license provisions if selling only milk all of which has been bought from a licensed dealer; the act shall not apply to condensed or concentrated milk in hermetically sealed cans or milk produced outside the State if shipped into the State in tanks and used solely for manufacturing purposes by the original consignee. Moreover, the act shall not be construed to affect the Public Service Company Law or any law relating to the public health or to the prevention of fraud or deception. Nor shall the act be construed as affecting adversely certain privileges of cooperatives. Finally, it should be recalled that the board may not issue official orders, in certain situations, without first securing the approval of the Governor.

Violation

Unlawful acts.- Acts specifically declared unlawful are: (1) for a milk dealer to buy milk from or sell milk to a milk dealer who is not either licensed or exempted, or in any way to deal in or handle milk which he has reason to believe has previously been dealt in or handled in violation of the provisions of the act; (2) after the board, with the approval of the Governor, has fixed milk prices, for a milk dealer or producer to sell or buy, or offer to sell or buy, milk at any price less or more than such price or prices as shall be applicable to the particular transaction; (3) for any milk dealer to sell any milk for which he has paid, or agreed to pay, in the State a price lower than that fixed by the board for milk of that class or grade, a proper allowance being made for cost of transportation of the milk; and (4) for any milk dealer, except as otherwise determined by the board, to pay a producer within the State, for milk to be sold in another State (having similar milk control authority), a price lower than that required to be paid for milk bought from a producer in such other State for similar purposes and under similar conditions, minus a proper allowance for transportation of the milk to market in such other State.

Penalties.- The act provides that "any person violating any provision of this act, or any rule, regulation or order of the board lawfully made, shall for the first or second offense, upon conviction thereof in a summary proceeding," be sentenced to pay a fine of not less than \$25 nor more than \$200, and for a third or subsequent offense shall be guilty of a misdemeanor, and, upon conviction therefor, shall be sentenced to pay a fine of not less than \$500 nor more than \$1,000 or to undergo imprisonment not exceeding one year, or both in the discretion of the court. Each day of violation shall be deemed an additional violation.

Legal Remedies

Board.- Action at law or in equity may be instituted by the board^{11/} as may appear necessary (1) to enforce compliance with any provision of the act, or with any rule, regulation or order of the board made pursuant to the provisions of the act, or (2) to obtain a judicial interpretation of any of the foregoing. In addition to any other remedy, the board may apply to the Court of Common Pleas of Dauphin County for relief by injunction without being compelled to allege or prove that an adequate remedy at law does not exist. Upon failure of payment to producers, the board may, if it deems best, sue on the bond on behalf of producer creditors.

Aggrieved parties.- Before the board shall refuse to grant, or shall suspend or revoke a license, the board shall afford the applicant, or the licensee, an opportunity to be heard, giving such person at least

^{11/} In addition to the board, any person, marketing committee, or association composed of persons affected by the orders, rules or regulations of the board may likewise institute such action.

five days' actual notice of hearing, together with a written statement of the matters complained of. After such hearing the board shall file at its office a copy of the order, and a statement in writing of the finding in support of, and the reasons for, said order. Such person (or any other person aggrieved by any other order of the board applying only to himself or to particular persons named in the order) may within 20 days after issuance of such order appeal to the Court of Common Pleas of the county in which he resides or has his principal place of business, but no such appeal shall act as a supersedeas, unless a surety bond be filed as the court shall determine, conditioned for the payment of costs in such sum as may be fixed by the court.

Any person aggrieved by an order of the board fixing the price or the terms upon which milk may be bought or sold, or by any other general rule, regulation or order of the board, may appeal to the Court of Common Pleas in Dauphin County but such appeal shall not be permitted to act as a supersedeas, except on special order of the court.

Procedure governing appeals, whether from special or general orders of the board, is set out in detail in the act, including petition and service of summons upon the board, certification of the record of the proceeding to which the petition refers and other matters pertaining to the advancement of the case to hearing. The case shall be heard de novo by the court or by a master. "The court shall determine whether or not the order appealed from is reasonable and in conformity with law," following which it shall take appropriate action, with full power to assess the costs upon either the board or the petitioner or to divide them between the two parties. From this court an appeal may be taken by the board or by the petitioner to the Superior Court of Pennsylvania in the manner provided by law.

Status of Cooperative Associations of Producers

The Pennsylvania Milk Control Board Law gives more consideration to defining the status of producers' cooperatives than any similar State law. A cooperative, under the definition of "milk dealer," is a cooperative agricultural association or corporation of producers of milk, organized under the laws of Pennsylvania or of any other State, and engaged in making collective sales of milk for producers under contract. Such a cooperative (1) shall not be deemed a milk dealer; but (2) if it distributes milk within the State to stores or consumers, it shall be deemed a milk dealer as regards such distribution; and (3) in any event it shall be governed by the applicable provisions of the act as to prices at which it sells, markets, or bargains to sell milk, within the State, to milk dealers other than stores. Under a narrower definition, where the cooperative shall be "engaged in making collective sales or marketing for its members or shareholders of dairy products produced by its members or shareholders," the cooperative shall not be considered a combination in restraint

of trade or an illegal monopoly.

Three other provisions on cooperatives are contained in the act: (1) a cooperative, organized as defined under "milk dealer," "and not conducted for profit," shall not be required to file a bond to assure payment for milk of its members; (2) a cooperative, as defined under "milk dealer," shall not be prevented, by the act, from blending the net proceeds of its sales in one or all of its markets in various classes and whether in fluid form or as manufactured products, both within and without the State, and paying its producers such blended price, with such deductions and differentials as are authorized by contract;^{12/} and (3) the powers of subpoena, entry, and inspection, vested in the board, shall apply for the purpose of examining and auditing books and records of any cooperative agricultural association or cooperative, for the purpose of administering the act.

PART TWO

I. Administrative Procedure, Rules, Regulations and Orders.

General exercise of authority in State.- Through official orders the board exercises control over the marketing and distribution of milk and designated milk products, everywhere in the State. Effective at this time are orders^{13/}, establishing and defining the following 10 milk marketing areas: No. 1- Philadelphia Area; No. 2- Pittsburgh Area; No. 3- South western Pennsylvania Area; No. 4- Schuylkill Area; No. 5- Scranton Area; No. 6- Lehigh Area; No. 7- Erie Area; No. 8- Harrisburg Area; No. 9- Johnstown Area; No. 10- State-wide Area. Some of these areas cover as many as six or more counties and include therein all cities and units, smaller than a county, having a population in excess of 1,000 persons. Areas wherein one or more counties are thus included are: No. 1- all of three counties and parts of two counties; No. 2- all of five counties and part of one county; No. 3- all of six counties and part of one county; No. 4- all of two counties and parts of two counties; No. 5- all of two counties and part of one county; No. 6- all of four counties and parts of two counties; No. 10- consisting of all areas in the State that are not included in the other nine areas. Three of the milk marketing areas - Erie, Harrisburg and Johnstown - are confined to the incorporated territory of these cities and the areas within a distance of five, four, and four miles, respectively, from their outer limits.

Persons controlled or affected.- Milk dealers generally throughout the State are licensed by the board, except that, as has been noted, (1) stores selling only milk bought from licensed dealers are exempt from

^{12/} Under somewhat restricted conditions it may include nonmember producers in its collective selling and blended payment procedure.

^{13/} Official General Order No. 28, effective October 11, 1936, establishes and defines these areas, except the Philadelphia Milk Marketing Area, covered by Official General Order No. 40, effective February 15, 1937, and the Pittsburgh Milk Marketing Area, covered by Official General Order No. 33, effective December 21, 1936.

license requirements, and (2) the board, in its discretion, may exempt certain small dealers and dealers selling milk only in certain small markets.^{14/} Licensees are not the only ones, however, controlled or affected by the board's exercise of power, for milk dealers (licensed or not) and producers are required by the act to buy or sell milk at a price no more or less than the price established for each applicable transaction.

Classification for the purposes of price determination.- For the purpose of establishing prices to producers, milk is classified according to its use or, in some instances, according to its presumed or intended use. In the case of each of the milk marketing areas, for example, Class 1 milk includes all milk handled and so marketed by a dealer "as to be readily open to the supposition that it will find its ordinary utilization by human consumption as raw or pasteurized milk, homogenized milk, chocolate or other flavored milk, or milk drink." . . . "It also includes all milk received at a milk plant or receiving station in fluid form, in the absence of clear evidence that such milk is so accounted for as to fall into some other class."

In addition to Class 1 milk, each marketing area has two or more classifications. In all areas except the Pittsburgh area, Class 2 milk includes all milk handled other than as Class 1 or Class 3 milk, and Class 3 milk includes all milk manufactured into butter, except that milk made into butter utilized in ice cream or other dairy products shall be included in Class 2 milk. These three classes apply exclusively only in the case of the Philadelphia area. The Pittsburgh area differs from the above in that (1) Class 2 milk includes all milk utilized in any form in the manufacture of ice cream mix, ice cream of several varieties, soups, powdered whole milk, and 15 or more specified soft cheeses, and (2) there is a fourth class, viz., Class 1A, which includes all milk from which is derived sweet or sour cream to be sold for human consumption as sweet or sour cream. Areas other than the Philadelphia and Pittsburgh areas may have (in addition to the first three classes which are identical with the Philadelphia classes), as exceptions to Class 2 milk, three more classes, as follows: Class 4 - all milk utilized in the manufacture of milk chocolate, candy and confectioneries; Class 5 - all milk likewise used in farmer's pressed cheese and cream cheese; Class 6 - all milk likewise used in American cheese.

In addition to these "use" classifications, classifications of a different nature are included in the orders of the board. Examples of these are: (1) Unaccounted-for milk (which is all milk not accounted for by a dealer's records and presumed to be Class 1 milk); (2) distressed milk; (3) milk to be resold in other States; and (4) milk sold by dealer to dealer.

^{14/} See "Licensing powers," Part One.

Resale classifications for which schedules of prices are established include: Grade "A" milk, Grade "B" milk, chocolate and other flavored milk, buttermilk (cream and plain), skim milk, cream (sweet or sour, light, medium, and heavy), ice cream mix, condensed skim milk, and condensed milk (medium and heavy).

Method of payment; no base rating or market-wide pooling.- As has been stated in Part One, there is no specific provision in the act authorizing the board to establish either base rating or market-wide pooling. Nor is any attempt being made administratively to institute or regulate such plans. Dealers in all marketing areas are required to pay producers on a weight and butterfat basis and "as determined by the utilization of the aggregate of milk received at each plant or receiving station during the period covered by the payment, except that after written permission has been received from, or notice has been served by, the Milk Control Board, authorizing or directing such action, the milk dealer shall base payments upon the aggregate utilization basis of the milk received at the several plants or receiving stations which are operated together for marketing purposes, or make such other special provisions as may be authorized or directed. Milk dealers using a blended price shall compute such blended price on the actual utilization and minimum prices as prescribed herein: Provided, however, that such actual utilization and minimum prices for each classification of utilization are shown on the monthly statement to producers as prescribed under Section 16."

Trade practices.- Certain trade practices apply to all milk dealers and cooperative agricultural associations. In all areas the following are prohibited: (1) the use of such methods as discount, rebate, advertising allowance, or combination sale, whereby fluid milk or cream shall be reduced below prices fixed by the board; (2) the rejection of a producer's milk except it be of inferior quality; and (3) the termination by the dealer or the producer of his contract or purchasing agreement except upon seven days' written notice.

Records and reports.- In compliance with provisions in the law (see Records and reports, Part One), every licensed milk dealer is required to make and file various monthly, quarterly and annual reports for the use of the board. The original books of account and other records upon which the reports are based shall, in the case of the monthly and quarterly reports, be kept available for verification by the board for a period of at least one year and two years, respectively. In addition, all dealers buying milk or cream from producers, or from cooperatives selling on behalf of their members, are required to render to each producer or cooperative a monthly statement giving in detail a full accounting of purchases made the preceding month.

PART THREE

Legal Status

Litigation.- Both the validity of the Pennsylvania Milk Control

Act and of administrative procedures of the board have been challenged in court proceedings. One case overshadows all others in importance, - Wayne L. Rohrer, trading as Rohrer's Med-O-Farms Dairy, Appellant v. Milk Control Board (186 Atl. 336), in which the State Supreme Court, by a five to two decision, rendered on June 26, 1936, sweepingly sustained the constitutionality of the act.

The case originated when the board found that Rohrer had wilfully violated the board's orders by paying his producers less than the minimum prices required and ordered him to cease and desist from operating in any way in Pennsylvania as a milk dealer. Thereupon he appealed to the Court of Common Pleas of Lancaster County, which upheld the board, the case next going on appeal to the Superior Court of Pennsylvania (No. 239, October term, 1935).

The majority of the Superior Court, rejecting the decision of the United States Supreme Court in the *Nebbia* case as not controlling and quoting with approval from the dissenting opinion of Justice McReynolds, stated as its opinion "that the milk business is not affected with a public interest" and held that the price-fixing section of the act was unconstitutional and an unlawful delegation of authority by the Legislature. Three judges dissented.

The Supreme Court rejected the majority decision of the Superior Court, and affirmed the dissenting opinion. Salient features of the dissenting opinion, thus upheld by the Supreme Court, are: (1) the act, essentially the same as the New York Act, upheld in the *Nebbia* decision, is not violative of the due process clause of the Federal Constitution, nor is it violative of the Pennsylvania Declaration of Rights - in view of the fact that the legislation was "deemed necessary for the public welfare in a unique and basic industry such as the production, distribution and supply of milk;" (2) the fact that this law, enacted primarily for the benefit of the general public, might also produce special benefit to milk producers, does not thereby render the act unconstitutional; (3) the wisdom of legislation, if constitutional, is not a matter of inquiry by the courts; and (4) there is no unlawful delegation of legislative authority. The statute does not delegate power to make law, but merely power to determine facts and apply the intention of the Legislature to remedy conditions in the milk industry to the facts as determined by the board.